

(d) *Continued eligibility.* (1) In order to continue receiving benefits at the full-dollar rate under this section, a veteran must be physically present in the U.S. for at least 183 days of each calendar year in which he or she receives payments at the full-dollar rate, and may not be absent from the U.S. for more than 60 consecutive days at a time. However, if a veteran becomes eligible for full-dollar rate benefits on an initial basis, on or after July 1 of any calendar year, the 183-day rule will not apply during that calendar year. VA will not consider a veteran to have been absent from the U.S. if he or she left and returned to the U.S. on the same date.

(2) A veteran receiving benefits at the full-dollar rate under this section must notify VA within 30 days of leaving the U.S. or within 30 days if he or she loses either his or her U.S. citizenship or lawful permanent resident alien status. When a veteran no longer meets the eligibility requirements of paragraph (a) of this section, VA will reduce his or her payment to the rate of \$0.50 for each dollar authorized under the law, effective on the date determined under § 3.505. If such veteran regains his or her U.S. citizenship or lawful permanent resident alien status, VA will restore full-dollar rate benefits, effective the date the veteran meets the eligibility requirements in § 3.42.

(3) When requested to do so by VA, a veteran receiving benefits at the full-dollar rate under this section must verify that he or she continues to meet the residency and citizenship/permanent-resident-alien status requirements of paragraph (b). VA will advise the veteran at the time of the request that the verification must be furnished within 60 days and that failure to do so will result in the reduction of benefits. If the veteran fails to furnish the evidence within 60 days, VA will reduce his or her payment to the rate of \$0.50 for each dollar authorized, as provided in § 3.652.

(4) A veteran receiving benefits at the full-dollar rate under this section must promptly notify VA of any change of his or her address. If mail from VA to the veteran is returned to VA by the U.S. Postal Service, VA will

reduce his or her payment to the rate of \$0.50 for each dollar authorized under law, effective on the date determined under § 3.505.

(e) *Effective date for restored eligibility.* In the case of a veteran receiving benefits at the full-dollar rate, if his or her payments are reduced to the rate of \$0.50 for each dollar authorized under the law, VA will resume payments at the full-dollar rate, if otherwise in order, effective the first day of the month following the date on which he or she again meets the requirements. However, such increased payments will be retroactive no more than one year prior to the date on which VA receives evidence that he or she again meets the requirements. If payments are reduced based on an absence from the U.S. of 183 or more days during a calendar year, VA will not resume payments at the full-dollar rate before the first day of the following calendar year.

(Authority: 38 U.S.C. 107, 501(a))

[66 FR 66767, Dec. 27, 2001]

§ 3.43 Burial benefits at the full-dollar rate for certain Filipino veterans residing in the United States on the date of death.

(a) *Definitions.* For purposes of this section:

(1) *United States* (U.S.) means the states, territories and possessions of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

(2) *Residing in the U.S.* means an individual's principal, actual dwelling place was in the U.S. When death occurs outside the U.S., VA will consider the deceased individual to have been residing in the U.S. on the date of death if the individual maintained his or her principal actual dwelling place in the U.S. until his or her most recent departure from the U.S., and he or she had been physically absent from the U.S. less than 61 consecutive days when he or she died.

(3) *Citizen of the U.S.* means any individual who acquires U.S. citizenship through birth in the territorial U.S., birth abroad as provided under title 8, United States Code, or through naturalization, and has not renounced his or her U.S. citizenship, or had such

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citizenship cancelled, revoked, or otherwise terminated.

(4) *Lawfully admitted for permanent residence* means that the individual was lawfully accorded the privilege of residing permanently in the U.S. as an immigrant by the U.S. Immigration and Naturalization Service, and on the date of death, still had this status.

(b) *Payment of burial benefits at the full-dollar rate.* VA will pay burial benefits under chapter 23 of title 38, United States Code, at the full-dollar rate, based on service described in § 3.40(c) or (d), when an individual who performed such service dies after November 1, 2000, and was on the date of death:

- (1) Residing in the U.S.; and
- (2) Either—
 - (i) A citizen of the U.S., or
 - (ii) An alien lawfully admitted for permanent residence in the U.S.; and
- (3) Either—
 - (i) Receiving compensation under chapter 11 of title 38, United States Code; or
 - (ii) Would have satisfied the disability, income and net worth requirements of § 3.3(a)(3) of this part and would have been eligible for pension if the veteran's service had been deemed to be active military, naval, or air service.

(c) *Evidence of eligibility.* (1) In a claim for full-dollar rate burial payments based on the deceased veteran having been a natural born citizen of the U.S., a valid original or copy of one of the following documents is required:

- (i) A valid U.S. passport;
- (ii) A birth certificate showing that he or she was born in the U.S.; or
- (iii) A Report of Birth Abroad of a Citizen of the U.S. issued by a U.S. consulate abroad.

(2) In a claim based on the deceased veteran having been a naturalized citizen of the U.S., only verification of that status by the U.S. Immigration and Naturalization Service to VA will be sufficient proof for purposes of eligibility for full-dollar rate benefits.

(3) In a claim based on the deceased veteran having been an alien lawfully admitted for permanent residence in the U.S., only verification of that status by the U.S. Immigration and Naturalization Service to VA will be suffi-

cient proof for purposes of eligibility for full-dollar rate benefits.

(4) In a claim for burial benefits at the full-dollar rate, evidence (which may include, for example, a driver's license, lease agreement or utility bills) must establish that the deceased veteran was, on the date of death, residing at a valid street address in the U.S.

(Authority: 38 U.S.C. 107, 501(a))

[66 FR 66767, Dec. 27, 2001]

RELATIONSHIP

§ 3.50 Spouse and surviving spouse.

(a) *Spouse.* "Spouse" means a person of the opposite sex whose marriage to the veteran meets the requirements of § 3.1(j).

(b) *Surviving spouse.* Except as provided in § 3.52, "surviving spouse" means a person of the opposite sex whose marriage to the veteran meets the requirements of § 3.1(j) and who was the spouse of the veteran at the time of the veteran's death and:

(1) Who lived with the veteran continuously from the date of marriage to the date of the veteran's death except where there was a separation which was due to the misconduct of, or procured by, the veteran without the fault of the spouse; and

(2) Except as provided in § 3.55, has not remarried or has not since the death of the veteran and after September 19, 1962, lived with another person of the opposite sex and held himself or herself out openly to the public to be the spouse of such other person.

[62 FR 5529, Feb. 6, 1997]

§ 3.52 Marriages deemed valid.

Where an attempted marriage of a claimant to the veteran was invalid by reason of a legal impediment, the marriage will nevertheless be deemed valid if:

(a) The marriage occurred 1 year or more before the veteran died or existed for any period of time if a child was born of the purported marriage or was born to them before such marriage (see § 3.54(d)), and

(b) The claimant entered into the marriage without knowledge of the impediment, and